BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service Commission on its own motion to conduct an investigation on intrastate switched access charge policies and regulation codified in <u>Neb. Rev. Stat</u>. Section 86-140.	)	Application No. C-4145/ NUSF-74/ PI-147 **COMMENTS OF VERIZON**

MCI Communications Services, Inc. d/b/a Verizon Business Services ("Verizon") submits these comments in the above-referenced docket. In its order opening this docket, the Commission posed a number of questions that it asked parties to address. Verizon's comments on the questions are set forth below.

1. *Are the Commission's initial policy goals set out in 1999 for intrastate switched access reform still valid today? Have they been achieved? What further steps, if any, should be considered?*

The Commission's initial policy goals on intrastate switched access charges issued in 1999 are still valid today. But the goals have not been achieved to date, as a number of carriers maintain intrastate switched access charges that violate those goals.

A. <u>The Commission's Policy Goals Stated in 1999 Continue to Be Valid</u>.

(i) <u>The Commission's Policy Goals.</u>

The Commission articulated its policy goals for intrastate switched access reform in 1999 and has followed those policies in subsequent orders issued during the past decade. Those orders[1] and policies are generally summarized below.

In years past, the prices for switched access service were set at levels intended to provide funding support for basic local phone service. In January 1999, however, the Commission

---

[1] Application Nos. C-1628/NUSF, NUSF-17, NUSF-18, NUSF-26 and NUSF-28.

RECEIVED
APR 23 2009
NEBRASKA PUBLIC SERVICE COMMISSION

concluded that in a competitive local market it was no longer appropriate to continue to rely on implicit subsidies in higher rates for switched access, toll and local business services to support basic exchange services.[2] Accordingly, the Commission ordered incumbent local exchange carriers ("ILECs") to begin removing implicit subsidies and reduce their access rates.[3] It established a transition period in which these price reductions were to occur and directed ILECs to file transition plans that would achieve these objectives consistent with the Commission's mandate.[4]

The Commission ordered carriers to implement an intrastate access charge structure that approximates the structure of their interstate access charges.[5] It required non-rural ILECs to eliminate certain rate elements (*e.g.*, primary interexchange carrier charge, access charge residuals, and residual or transition interconnection charges) because they were not competitively neutral or otherwise appropriate.[6] Non-rural ILECs were also required to eliminate the carrier common line ("CCL") rate element.[7] The Commission ruled that any carrier whose intrastate access charges violated the Commission's access charge policies would be ineligible for funding from the Nebraska universal service fund ("NUSF").

The removal of implicit subsidies from access rates and other services was expected to result in some reduction in support for the basic exchange services that those rates had previously helped subsidize. In its 1999 order, the Commission anticipated that the lost support "may, over a reasonable period of time, be replaced through increases in rates [for local and other services] and by state and federal universal service funds."[8] The Commission stated that

---

2 Application No. C-1628, Findings and Conclusions (January 13, 1999) at 2.
3 *Id.*
4 *Id.* at 3, 7-8.
5 *Id.* at 5, 7.
6 *Id.* at 7.
7 *Id.* at 8.
8 *Id.* at 2.

"[d]uring the transition periods," an eligible carrier might receive NUSF funding to partially offset the implicit support it received through reductions in its access charges and other services.[9]

The Commission relied on and followed these policies in subsequent proceedings in which it addressed particular carriers. In 2002, it approved Qwest's proposal to further reduce its access rates on a revenue-neutral basis.[10] Recalling its earlier requirement that a non-rural local exchange carrier's ("LEC's") intrastate switched access structure should mirror its interstate rate structure, the Commission concluded that "[t]he ongoing implementation of this policy reduces jurisdictional disparities, promotes rational pricing and reduces opportunities for arbitrage."[11] Although it did not find a need to consider any cost studies in making these determinations, the Commission concluded that there were implicit subsidies in Qwest's intrastate access charges, and found the proposed access rate reductions to be appropriate.[12]

The Commission also conducted a separate investigation of rural ILECs in 2002. Noting the "progression towards lowering access charges" resulting from its 1999 policy directives, the Commission found that "continued reductions in intrastate access rates and the shifting of these universal service costs to explicit sources are desirable."[13] In addition to maintaining the four-year transition to lower access rates adopted for rural ILECs in 1999, the Commission ordered those carriers to eliminate the CCL element from their intrastate access rates. The Commission found that eliminating the CCL "will encourage rational pricing signals and should benefit consumers through lower intrastate toll rates."[14] Finally, the Commission ruled that a Competitive Local Exchange Carrier's ("CLEC's") intrastate switched access charges, in the

---

[9] *Id.* at 7. The Commission subsequently confirmed that no ILEC is entitled to achieve revenue neutrality through NUSF support, and there is no guarantee of cost recovery from that fund. Application No. NUSF-26, Progression Order No. 2 (August 27, 2002) at ¶ 22.
[10] Application No. NUSF-17, Findings and Conclusions in Order (September 24, 2002) at ¶ 14.
[11] *Id.* at ¶ 20.
[12] *Id.* at ¶¶ 18-20.
[13] Application No. NUSF-28, Findings and Conclusions (November 26, 2002) at ¶ 27, 30.
[14] *Id.* at ¶ 31.

aggregate, must be reasonably comparable to the intrastate access rates of the ILEC with which it competes.[15]

(ii) The Commission's General Policy Goals Are Consistent with Federal Law.

The Federal Communications Commission ("FCC") has emphasized that irrational access rate structures "lead to inefficient and undesirable economic behavior,"[16] suppressing demand for the services of other carriers which must pay excessive access charges and reducing incentives for local entry by firms that might be able to provide service more efficiently than the LEC.[17] By raising the price of a necessary input to other carriers, the cost, and, therefore the price, of those carriers' services are artificially elevated.

This Commission's policies designed to reduce the implicit subsidies in access rates were based on similar findings and were expressly intended to minimize the market distortions described by the FCC. Moreover, the Commission expressly endorsed the FCC's *CALLS Order* and relied upon that agency's expertise in fashioning its own access charge policies for Nebraska.[18] Accordingly, the Commission's decisions on these issues have complied with the requirement of *Neb. Rev. Stat.* § 86-140 that "[a]ny actions" to set intrastate switched access charges "taken pursuant to this subsection shall be substantially consistent with the federal act and federal actions taken under its authority."

The FCC also repeatedly concluded that economically efficient competition -- and the corresponding consumer benefits -- cannot be fully achieved as long as carriers seek to recover a

[15] Application No. C-1628, Progression Order #15 (February 21, 2001) at ¶ 9.
[16] *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Low-Volume Long Distance Users; Federal-State Joint Board On Universal Service*, Sixth Report & Order in CC Docket Nos. 96-262 and 94-1, Report and Order in CC Docket No. 99-249, Eleventh Report and Order in CC Docket No. 96-45, 15 FCC Rcd 12962 (May 31, 2000) ("*CALLS Order*") at ¶ 129.
[17] *Id.* at ¶ 114.
[18] NUSF-28 Findings and Conclusions (Nov. 26, 2002) at ¶ 30; Application No. NUSF-17 (Sept. 24, 2002) at ¶ 17-19; *see also id.* at ¶ 20 (concluding that its access charge decision was "in line with ... decisions by ... the FCC, and "consistent with the structure and policies set forth in the Telecommunications Act of 1996").

disproportionate share of their costs from other carriers through access charges, rather than from their own end users.[19] As the FCC noted,

> [t]hese transfers [of payments from one group of carriers to another], while reducing the pressures on the local companies to raise monthly rates, contributed to inefficiently high long distance rates. The high rates were responsible for suppressing demand for long distance calls and inducing large corporations to bypass the public switched network. Moreover, while such revenue sharing arrangements were sustainable in an industry where one firm monopolized both long distance and local service, they are not compatible with a competitive long distance industry."[20]

Disproportionately high access charges also provide an incentive for carriers to stimulate artificial demand for access services in order to increase their own revenues and profits—commonly known as "traffic pumping." AT&T, Qwest, and Sprint all filed federal court complaints against several independent LECs and CLECs in Iowa for traffic pumping schemes and Verizon has, likewise, filed traffic pumping complaints against CLECs in Iowa and South Dakota.[21] In this arbitrage scenario, a LEC collaborates with a non-LEC entity that advertises "free" international calling, adult content calling, or other such "free" services to generate access minutes—and terminating access fees—for the LEC. The LEC then gives the non-LEC firm kickbacks of a portion of the terminating switched access fees carriers pay to the ILEC. The LEC thus exploits its high access rates at the expense of the carriers compelled to send long-

---

[19] *See generally CALLS Order*; *Multi-Association (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report & Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report & Order in CC Docket No. 96-45, and Report & Order in CC Docket Nos. 98-77 and 98-166, 16 FCC Rcd 19613 (2001) ("*MAG Order*"); *Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, Seventh Report & Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 9923 (2001) ("*CLEC Rate Cap Order*").

[20] Trends in Telephone Service, Industry Analysis and Technology Division Wireline Competition Bureau, Federal Communications Commission (August 2008) at 1-1.

[21] *See, e.g.*, Complaint, Request for Declaratory Relief and Request for Emergency Injunctive Relief, *Qwest Comm. Corp. v. Superior Tel. Cooperative, the Farmers Tel. Co. of Riceville, Iowa, The Farmers & Merchants Mutual Tel.Co. of Wayland, Iowa, Interstate 35 Tel. Co. d/b/a/ Interstate Comm. Co., Dixon Tel. Co., Reasnor Tel. Co., LLC, Great Lakes Comm. Corp., and Aventure Comm. Technology, LLC*, Docket No. FCU-07-2 (filed Feb. 7, 2007); *Verizon v. BTC Inc., OmniTel Communications and Premier Communications, Inc.*, Iowa Utilities Board Docket No. FCU-08-11 (filed May 29, 2008).

distance calls to the LEC's network. Reducing excessive access rates will curb the opportunities for fraud and arbitrage that arise from undue rate disparities among carriers. The best way to eliminate the incentive and opportunity to engage in these kinds of anti-consumer practices is to reduce switched access rates to more reasonable levels. As this Commission previously found, there is no reason to leave in place access rates that undermine fair and efficient competition and invite fraud.

Per-minute interstate access charges have been reduced substantially, particularly for large carriers, as a result of federal directives to reduce implicit subsidies in those rates. According to the FCC's most recent "Trends in Telephone Service" report (August 2008), the national average total charge per conversation minute (which includes both originating and terminating access rates) for interstate switched access has been reduced from more than 6.5 cents in 1994 to about 1.7 cents as of June 2008, a reduction of 74 percent.[22]

(iii) The Commission's Policy Goals to Reform Access Charges of Rural LECs Are Consistent with Federal Law.

With specific regard to relatively small, rural carriers, the FCC found that rationalizing their switched access rates will enhance incentives for interexchange carriers to originate service in rural areas and will foster facilities-based competition for residential subscribers in those areas.[23] Similarly, the Commission's access charge policies described above were expressly intended to remove disincentives for carriers to compete in Nebraska for both toll and local services.

The Commission's policy goal of removing implicit subsidies and reducing access rates is appropriate in light of the tremendous financial support that is available to carriers that operate in rural areas. Rural LECs in Nebraska already receive massive subsidies from the federal

[22] FCC, "Trends in Telephone Service: August 2008," Table 1.2.
[23] *MAG Order* at ¶ 11.

program. Rural LECs receive interstate support that is explicitly intended to cover the costs of providing *intrastate* service. One objective of the FCC's access rate-setting process was to recover, in interstate rates, a portion of the intrastate costs of smaller carriers such as rural LECs in Nebraska. As the FCC explained in its *MAG Order*, "[r]ate-of-return carriers also receive federal high-cost support for intrastate services through the high-cost loop support mechanism and Local Switching Support (LSS)."[24] "By providing this federal support for intrastate costs, the Commission assists the states in ensuring that intrastate rates remain affordable and reasonably comparable."[25] Based on federal USF data, Verizon estimates that rural LECs in Nebraska will receive more than $95 million in 2009 in high-cost support and that all eligible telecommunications carriers ("ETCs") in Nebraska will receive more than $111 million this year.[26] There is no reason to assume the rural LECs need more in universal service payments, let alone subsidies from their intrastate access rates, to support traditional local landline service — particularly when telephone household penetration rates show wireline telephone penetration in Nebraska to be 95.6%, higher than the national figure of 95.4%,[27] and when consumers have wireless and other options universally available to them.

To the extent rural LECs continue to rely on the revenue contributions implicit in above-cost intrastate switched access rates to cover costs associated with other services, those carriers should more appropriately recover those costs through the rates they charge their retail

---

[24] *MAG Order* at ¶ 22.
[25] *Id.*
[26] Universal Service Administrative Company ("USAC"), High Cost Support with Capped CETC Support Projected by State by Study Area, Appendix HC01, 2Q2009, available on-line at http://www.usac.org/about/governance/fcc-filings/2009/quarter-2.aspx. The USAC is an independent, not-for-profit corporation designated as the administrator of the federal Universal Service Fund by the FCC.
Universal Service Administrative Company, High Cost Support with Capped CETC Support Projected by State by Study Area, Appendix HC01, 2Q2009, page 16. http://www.usac.org/about/governance/fcc-filings/2009/quarter-2.aspx.
[27] *See, e.g.*, FCC Industry Analysis and Technology Division, "Telephone Subscribership in the United States" (Data through July 2008), Table 2, .Released March 2009. Table 2 can be found at: http://www.fcc.gov/wcb/iatd/lec.html.

customers.[28] With respect to interstate services, the FCC relied on the interstate USF and Subscriber Line Charge ("SLC") to recover fixed costs because those are the only fixed cost recovery rate mechanisms available to it. On the state side, the most logical place to recover fixed costs is through charges to end users – although, absent additional evidence, there is no reason to assume end users' local rates will rise if access rates are reduced. The Commission's policies no longer call for revenue-neutral rate adjustments, but anticipate that LECs will use the flexibility afforded them and modify their rates for local and other services as appropriate.[29]

(iv) The Commission's Policy Goals for Access Reform for CLECs are Consistent with Federal Law.

As stated above, the Commission ruled in 2001 that a CLEC's access charges, in the aggregate, must be reasonably comparable to those of the ILEC with which it competes. This policy is consistent with the FCC's policy on CLEC interstate access rates adopted the same year. When it imposed a cap on CLEC rates, the FCC observed that allowing carriers to shift their costs onto the long-distance market through unduly high access rates "is inconsistent with the competitive market that we seek to encourage for access service."[30] To address this issue at the federal level, the FCC eight years ago established a benchmark policy whereby a CLEC's per minute interstate access charges are capped at the interstate access rates of the ILEC with which the CLEC competes.[31] CLEC access charges that do not exceed the benchmark are presumed to be just and reasonable.[32] The FCC explained its benchmark policy as follows:

[28] *See In the matter of the Nebraska Public Service Commission, on its own motion, to make adjustments to the universal service fund mechanism in NUSF-26,* Application No. NUSF-50 (December 19, 2006) at ¶ 23.
[29] Application C-1628 (Jan. 13, 1999) at ¶¶ 2, 3, 7.
[30] *CLEC Rate Cap Order* at ¶ 33.
[31] *CLEC Access Charge Reform* at ¶ 40. The FCC codified this rule at 47 C.F.R. § 61.26 (b).

[32] The FCC allows CLECs to charge rates higher than those of the ILEC only through negotiated arrangements. The FCC reasoned that if a CLEC provides a superior quality of access service, or if it has a particularly desirable subscriber base, an interexchange carrier may be willing to pay access rates above the benchmark. *Id.* at ¶ 43.

> [A] benchmark provides a bright line rule that permits a simple determination of whether a CLEC's access rates are just and reasonable. Such a bright line approach is particularly desirable given the current legal and practical difficulties involved with comparing CLEC rates to any objective standard of "reasonableness." Historically, ILEC access charges have been the product of an extensive regulatory process by which an incumbent's costs are subject to detailed accounting requirements, divided into regulated and non-regulated portions, and separated between the interstate and intrastate jurisdictions. Once the regulated, interstate portion of an ILEC's costs is identified, our access charge rules specify in detail the rate structure under which an incumbent may recover those costs. This process has yielded presumptively just and reasonable access rates for ILECs.[33]

The FCC's rule was prompted by "persistent" concerns that CLEC access rates varied dramatically and were frequently well above the rates charged by ILECs operating in the same area. The FCC's price cap was, therefore, intended to prevent CLECs from imposing excessive access charges on interexchange carriers and their customers.[34] This Commission's policy with respect to CLEC access rates in Nebraska is intended to achieve the same purpose.

B. <u>The Commission's Policy Goals Have Not Been Fully Achieved.</u>

The Commission's policy goals, while sound, have not been fully realized. Progress has been made in reducing access charges in Nebraska, but only to an extent. Some of the objectives of the initial transition plans adopted 10 years ago were probably met, but not much else has transpired in the past decade.

The most obvious failing is the lack of enforcement of the Commission's pricing policy with respect to CLECs. Many CLECs in Nebraska charge intrastate switched access rates that are *many multiples higher* than Qwest's current rate. The rates that several CLECs charge

---

33 *CLEC Access Charge Reform* at ¶ 41.

34 *Id.* at ¶¶ 32-34.

Verizon range between 5 and 9 cents and even as high as 16 cents per minute, for only terminating intrastate interexchange calls in Nebraska—among the highest rates in the country. Qwest's rate, in contrast, is significantly lower.[35] Specific evidence of such rate disparities was also presented last year in the record of Application Nos. C-3945/NUSF-60.02/PI-138. Despite these rampant violations, however, there has been no apparent effort made to require these CLECs to comply with the Commission's eight year-old policy.

To the extent any ILEC continues to charge intrastate switched access rates that contain excessive implicit subsidies, the Commission's initial and subsequent policy goals contained in the Commission's access rate orders also have not been achieved. As noted above, in its January 1999 order, the Commission concluded that the state access charge structure should approximate the interstate access charge structure. By the Commission's own findings, any LEC that is charging an intrastate switched access rate that is not at or below its interstate switched access rate is charging a rate that contains implicit subsidies. Moreover, both this Commission and the FCC have found that, despite earlier access reform efforts, implicit subsidies still exist in the intrastate and interstate access rates of many carriers.[36]

---

[35] As evidenced by the lengthy list of inter-carrier agreements on the Commission's website, most CLECs have interconnection or similar types of agreements with Qwest to provide service within its territory. Because Qwest is the primary LEC against which most CLECs compete, Qwest's access rates in most cases will be the benchmark against which CLEC rates must be measured to determine whether they are "comparable." In the case of Verizon, virtually every one of the CLECs that bills it any appreciable amount of switched access traffic in Nebraska has an inter-carrier agreement with Qwest and thus competes with Qwest in its service territory in Nebraska. Thus, the high rates indicated in the text above cannot be considered reasonable when compared with Qwest's much lower rates.

[36] NUSF-19 (Sept. 24, 2002) at ¶ 19.

2. *Should the Commission's policy of intrastate switched access rate reform be modified? If so, in what way?*

It is not the Commission's intrastate switched access reform policies that need to be modified; rather, the Commission should take concrete steps to implement those policies that have yet to be achieved. These steps should include Commission actions to: (i) enforce the Commission's policy that intrastate switched access rates charged by CLECs are comparable to the rates charged by their ILEC competitors; (ii) remove excessive implicit subsidies from intrastate switched access rates charged by rural ILECs; and (iii) set a uniform benchmark for all carriers' rates.

A. <u>The Commission Should Enforce the Existing CLEC Rate Cap.</u>

The Commission should enforce its existing policy of requiring CLECs to charge intrastate access rates comparable to those of ILECs by issuing a show cause order to any CLEC that is not charging the appropriate ILEC rates. As noted above, CLECs in Nebraska already are subject to a rate cap for their interstate access rates at the level of the competing ILEC. The Commission should confirm and vigorously enforce this same method of calculating the cap on CLEC intrastate switched access rates. This Commission policy is reasonable, it can be readily implemented by carriers that are not complying with the policy on the intrastate side now, and is simple to administer and enforce.

B. <u>The Commission Should Remove Excessive Implicit Subsidies From LEC Access Rates.</u>

The Commission relied on the FCC's expertise and its lengthy and detailed examination of interstate access rates in making its decision to require ILECs in Nebraska to mirror the interstate rate structure.[37] Because of this, the Commission may be of the view that interstate rates are more "cost-based" and thus worthy of emulation. At the same time, however, the Commission has recognized that interstate and intrastate access rates continue to contain implicit subsidies. Because the maintenance of implicit subsidies is inconsistent with the Commission's access charge policies that it first embraced in 1999, it should take steps to further reduce ILEC intrastate access rates and thereby remove additional subsidies that undermine the stated goals of its access charge reform policies. Based on Verizon's billing records, there are more than a dozen ILECs that charge more than 8 cents per minute, and as high as 28 cents per minute, for terminating switched access service in Nebraska.

C. **<u>The Commission Should Establish a Uniform Benchmark for Intrastate Switched Access Rates.</u>**

The FCC recognized that market-based mechanisms are the best way to produce efficient prices and promote the public interest.[38] Similarly, the Nebraska Legislature mandated in *Neb. Rev. Stat.* § 86-140(1) that carriers negotiate intercarrier compensation agreements. Ideally, intercarrier compensation charges, including access charges, should be negotiated by the telecommunications companies involved. Negotiated agreements are the best long-term solution to ensuring the efficiency of telecommunications markets in the face of substantial technological change. This kind of approach, by virtue of being technologically neutral, adapts more easily to changing technologies, encouraging their introduction without the need to modify the regulatory regime.

Until the industry can fully transition to a regime of commercially negotiated agreements, however, the Commission needs to assure that access rates are set and maintained at a level that

---

[37] Application No. NUSF-17 (Sept. 24, 2002) at ¶ 17-19.
[38] *CALLS Order* at ¶ 178.

will promote competition and economic efficiency in accordance with its policy goals established in 1999. Ideally, the Commission should establish a uniform benchmark that applies to all LECs' access charges. A uniform standard is competitively neutral, promotes rational pricing and reduces opportunities for arbitrage, consistent with the Commission's policy goals.

The intrastate switched access rates of Qwest provide the most appropriate benchmark for this purpose. As the Commission previously observed, Qwest's interstate access rates have been the subject of lengthy investigation by the FCC.[39] Similarly, as the largest ILEC and only regional Bell Operating Company in Nebraska, Qwest's intrastate switched access rates are subject to the greatest regulatory scrutiny[40] and the strictest economic discipline with respect to recovery of revenues from its own end users, rather than from other carriers. Accordingly, it would make sense to apply Qwest's intrastate access rates to other LECs. CLECs are already subject to this standard, as current Commission policy requires their intrastate access rates to be "reasonably comparable" with those of the LEC with which they compete. Because Qwest has such a large service territory in Nebraska and most CLECs operate and compete with Qwest in its service area,[41] using Qwest's rates as the benchmark would produce a competitively-neutral outcome. There should be no serious concern that Qwest's rate levels are inappropriately low, because the Commission has already found that Qwest's access rates are set above cost and still include implicit subsidies that have not yet been removed.[42] Qwest has admitted that this is the case.[43] Nevertheless, if there are any legitimate concerns, supported with facts, about an individual carrier's ability to meet the proposed benchmark, the Commission has shown its

---

[39] NUSF-17 (Sept. 24, 2002) at ¶ 17-18.
[40] *Id.* at ¶ 18-19 (noting that the Commission considered Qwest's access charge plan "at length" based on the evidence adduced at a hearing and other factors).
[41] *See* footnote 35, *supra*.
[42] *Id.* at ¶ 17-19; Application Nos. C-3945/NUSF-60.02/PI-138, Order (February 3, 2009) at 7.
[43] Application Nos. C-3945/NUSF-60.02/PI-138, Order (February 3, 2009) at 7.

willingness to phase in needed access charge reductions over a reasonable transition period (varying the length of the transition based on the type of carrier). From a competitive standpoint, and consistent with the Commission's policy goals, it makes sense to put carriers on equal footing by moving them to this common rate.

3. *How are access rates structured and does the structure vary from carrier to carrier? Should the structure of access rates affect the Commission's analysis of access rate increases?*

One of the Commission's policy goals over the past ten years has been to more closely align the structure of intrastate access tariffs with the carriers' interstate service offerings. As stated above, this objective appears to have been largely achieved with only a few minor exceptions. At the interstate level, the FCC's regulations establish certain definitions and basic ground rules that apply to a carrier's switched access service, but LECs retain some flexibility in the way they draft their tariffs and establish a rate structure for their individual access services. Within those guidelines, it is not improper for individual carriers to structure their services in somewhat different ways for operational and competitive reasons.

Because different LECs may have different access rate structures and may offer different functions, it may not always be easy to readily make apples-to-apples comparisons of different carriers' rates. In general, what is important are the charges for the functions that a carrier provides. Consistent with FCC rules, a cap or benchmark should allow a carrier to include the charges for switched access functions that a LEC actually performs at a rate no greater than the benchmark rate.[44] Thus, for example, a cap on a CLEC's rates should not include tandem

---

[44] *In the Matter of Access Charge Reform, Reform of Access Charges Imposed by Competitive Local Exchange Carriers*, CC Docket No. 96-262, Eighth Report and Order and Fifth Order on Reconsideration, 19 FCC Rcd. 9108, FCC 04-110 (May 18, 2004) at ¶ 21.

switching rate elements if the CLEC does not operate a tandem switch or provide tandem switching functions.

4. *Should limits be placed on the frequency of access cases that any carrier can file with the Commission?*

If a LEC is proposing to reduce access rates and remove implicit subsidies in its existing rates in furtherance of the Commission's policy goals, it should not be inhibited in its ability to make those changes quickly and efficiently. On the other hand, it is appropriate to impose some limitations on carriers' proposals to increase access rates. Simply put, only if a LEC's intrastate switched access rates are at levels that are lower than its corresponding interstate rates should the carrier be permitted to file for intrastate switched access rate increases. Carriers should not be allowed to raise access rates and increase the amount of implicit subsidies embedded in them, for that would be contrary to the Commission's policy goals described above.

The Commission need not conduct a cost case for every carrier to set just and reasonable access rates. For the reasons explained above, a benchmark policy is more rational and efficient for both the Commission and the regulated carriers. Cost cases are time-consuming, expensive, and anachronistic. The FCC and state commissions, including this Commission,[45] have relied on a benchmarking approach to determine appropriate levels for switched access rates.[46]

---

[45] In none of the decisions cited in fn. 1, *supra*, did the Commission conduct or find it necessary to rely upon cost studies when it established its access reform policies and applied them to the different groups of LECs. *See* NUSF-17 (Sept. 24, 2002) at ¶ 18-19; NUSF-28 (Nov. 26, 2002) at ¶¶ 27, 31; Application No. C-1628/NUSF, Progression Order #15 (February 21, 2001) at ¶ 9 (Commission established requirement that CLECs' intrastate switched access charges, in the aggregate, must be reasonably comparable to competing ILEC's rate).

[46] *See, e.g., CLEC Rate Cap Order*, 16 FCC Rcd 9923 (2001); **California** PUC D. 07-12-020 in Rulemaking 03-08-018 (Hearing Ex. 304) (a CLEC may not charge more than the higher of the state's two largest ILECs' switched access rate plus 10%); Decision, *DPUC Investigation of Intrastate Carrier Access Charges,* **Connecticut** D.P.U. Docket No. 02-05-17 (2004), 2004 Conn. PUC Lexis 15, at *45 (capping CLEC rates at SBC's then-current rate); **Delaware** Code, Title 26, § 707(e) (capping all service providers' switched access rates at the level of the largest ILEC in the state); **Indiana** Code § 8-1-2.6-1.5 (a carrier's switched access rates are just and reasonable if they mirror the carrier's interstate switched access rates); Arbitration Decision, *TDS Metrocom, Inc., Petition for*

5. *The Commission also invited comment on the proposals listed below as "potential objective evidentiary criteria to be considered by the Commission in intrastate switched access rate dockets under Neb. Rev. Stat. § 86-140."*

1) The NUSF-EARN form compiled on a supported services basis as a tool to measure the cost of providing access in conjunction with supported services.

2) The NUSF-EARN form to include the federal and state universal service support received by the requesting carrier.

3) Alternative revenue generation sources for the carrier, including local rates in both urban and rural areas.

4) Establish a reasonable rate-of-return for carriers seeking access rate increases.

5) Establish an appropriate test year to examine relevant information.

None of these proposals should be adopted. Instead, as discussed above, the Commission should take concrete steps to implement its longstanding access charge reform policies, and it should move toward a uniform benchmark rate cap for all carriers. The Commission seems to

---

Arbitration, **Illinois** Comm. Comm'n Docket No. 01-0338, at 48-50 (Aug. 8, 2001) and Arbitration Decision, *Arbitration Between AT&T Comm. of Illinois, Inc. and Ameritech*, Illinois Comm. Comm'n Docket No. 03-0239, at 149-51 (Aug. 26, 2003) (a CLEC may not charge an ILEC more for intrastate switched access than the ILEC charges the CLEC); 199 **Iowa** Admin. Code 22.14(2)(d)(1)(2) (prohibiting CLECs from charging a carrier common line charge if it would render the CLEC's rate higher than the competing ILEC's rate); **Louisiana** PSC General Order No. U-17949-TT, Appendix B, Section 301 (k)(4) (May 3, 1996)(a CLEC shall charge non-discriminatory switched access rates that do not exceed the intrastate switched access rates of the competing ILEC); Code of **Maryland** Regulations § 20.45.09.03(b) (capping CLECs' switched access rates at the level of the largest LEC in Maryland); Report and Order, *Access Rates to Be Charged by Competitive Local Exchange Telecommunications Companies in the State of Missouri*, **Missouri** P.S.C. Case No. TO-99-596, 2000 Mo. PSC Lexis 996, at *28-31 (June 1, 2001) (capping CLEC access rates at the competing ILEC's level); **New Hampshire** PUC § 431.07 (CLECs cannot charge higher rates for access than the ILEC does); Order, **New York** P.U.C. Case 94-C-0095, at 16-17 (Sept. 27, 1995), N.Y. P.U.C. Opinion 96-13, at 26-27 (May 22, 1996), and N.Y. P.S.C. Opinion 98-10, 1998 N.Y. PUC Lexis 325, at 26-27 (June 2, 1998) (establishing a benchmark for CLEC access charges at the level of the largest carrier in the LATA); Entry on Rehearing, *Establishment of Carrier-to-Carrier Rules*, **Ohio** P.U.C. Case No. 06-1344-TP-ORD, at 16-18 (Oct. 17, 2007) (capping CLECs' switched access rates at the level of the competing ILEC); 66 Pa. Consolidated Statutes § 3017 (c) (**Pennsylvania** statute prohibits CLEC "access rates higher than those charged by the incumbent local exchange telecommunications company in the same service territory, unless such carrier can demonstrate that the higher access rates are cost justified"); **Texas** P.U.C. Subst. Rule § 26.223 (a CLEC may not charge a higher aggregate amount for intrastate switched access than the ILEC in the area served or the statewide average composite rates published by the Texas P.U.C. and updated every two years); Final Order, *Amendment of Rules Governing the Certification and Regulation of CLECs*, **Virginia** State Corp. Comm. Case No. PUC-2007-00033 (Sept. 28, 2007) (a CLEC's switched access rate cannot exceed the higher of its interstate rate or the rate of the competing ILEC); **Washington** Admin. Code § 480-120-540 (requires LECs' terminating access rates to be no higher than their local interconnection rate).

ask what criteria should be examined in response to a carrier's proposal to increase its intrastate switched access rates, but such increases can and should be rejected without any need for analysis. No carrier should be increasing its switched access rates, particularly because the Commission has already found that implicit subsidies exist in current rates. Moreover, the Commission should not promote a policy of propping up carriers with inefficient cost structures by allowing them to charge switched access rates higher than the appropriate benchmark rate (in this case, Qwest's rate).

Conclusion

For the reasons described above, the Commission should adhere to the sound access charge policies it first adopted 10 years ago. It should now take the additional steps that are necessary to ensure that those policies are fully achieved and that its underlying goals are met.

Dated: April 23, 2009.

MCI COMMUNICATIONS SERVICES, INC.
D/B/A/VERIZON BUSINESS SERVICES

BY: ______________________

Steven G. Seglin (13756)
CROSBY GUENZEL LLP
134 So. 13th Street, Suite 400
Lincoln, NE 68508
402-434-7300 (telephone)
402-434-7303 (facsimile)
sgs@crosbylawfirm.com

and

Thomas F. Dixon
Assistant General Counsel NW Region
707 – 17th Street, 40th Floor
Denver, Colorado 80202
303-390-6206 (telephone)
303-390-6333 (facsimile)
thomas.f.dixon@verizon.com